

立法會
Legislative Council

LC Paper No. LS11/20-21

**Paper for the House Committee Meeting
on 27 November 2020**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 18 November 2020**

Tabling in LegCo : Council meeting of 25 November 2020

Amendment to be made by : Council meeting of 16 December 2020 (or that of 13 January 2021 if extended by resolution)

Prevention and Control of Disease (Requirements and Directions) (Business and Premises) (Amendment) (No. 7) Regulation 2020 (L.N. 222)

Prevention and Control of Disease (Prohibition on Group Gathering) (Amendment) (No. 13) Regulation 2020 (L.N. 223)

L.N. 222 and L.N. 223 are made by the Chief Executive in Council under section 8 of the Prevention and Control of Disease Ordinance (Cap. 599) having regard to the latest situation of public health emergency¹ relating to COVID-19.

L.N. 222

2. The Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) imposes certain requirements, and enables directions to be issued by the Secretary for Food and Health ("Secretary"), in respect of any catering business and certain scheduled premises as set out in Part 1 of Schedule 2 to Cap. 599F.

¹ Public health emergency is defined in section 8(5) of Cap. 599 to mean, among others, the occurrence of or the imminent threat of a disease, an epidemic or a pandemic that has a high probability of causing a large number of deaths or serious disabilities (whether or not long-term) in the population.

3. L.N. 222 amends Cap. 599F to:
- (a) add "hotel or guesthouse"² to Part 1 of Schedule 2 to Cap. 599F as a new type of scheduled premises so that the requirements or restrictions as specified in a relevant direction issued by the Secretary under Cap. 599F is applicable to hotels and guesthouses;
 - (b) empower an authorized officer (i.e. a public officer so appointed by the Secretary in writing under Cap. 599F) to enter and search any premises for a catering business or any scheduled premises with a search warrant for investigation, and consequentially amend the references to "inspector" to "authorized officer";
 - (c) provide that it is a defence for a person charged with an offence for a failure to comply with a direction issued by the Secretary in relation to any catering business or scheduled premises to establish that, at the time of the alleged offence, the person had taken all reasonable steps to comply with the direction concerned; and
 - (d) update the definition of "hotel" and "guesthouse" under Cap. 599F having regard to the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020 (6 of 2020)³, which will come into operation on 1 December 2020.
4. Except the amendment referred to in paragraph 3(d) above which will come into operation on 1 December 2020, L.N. 222 came into operation on 20 November 2020.

L.N. 223

5. The Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) prohibits group gathering of more than four persons in any public place during a specified period and provides for certain exemptions. L.N. 223 mainly amends Cap. 599G to:

- (a) extend the scope of Cap. 599G to cover group gatherings at any Cap. 599F premises (i.e. premises in relation to which a direction issued under section 6 or 8 of Cap. 599F ("Cap. 599F direction") is

² Under section 2 of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349), "hotel" and "guesthouse" are defined to mean any premises whose occupier, proprietor or tenant holds out that, to the extent of his available accommodation, he will provide sleeping accommodation for any person presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received.

³ Under the Hotel and Guesthouse Accommodation (Amendment) Ordinance 2020, "hotel or guesthouse" is defined to mean any premises that are held out as providing sleeping accommodation to any persons presenting themselves who are willing to pay a fee for the sleeping accommodation.

in force) whether the premises are a public place or not. The legal effect of the amendment is that a group gathering at any Cap. 599F premises will be prohibited under Cap. 599G if any requirement or restriction that is specified in the relevant Cap. 599F direction and imposed in relation to a group gathering at the premises is not complied with; and

- (b) provide that it is a defence for a person who is charged with an offence under section 6(1) of Cap. 599G in respect of a prohibited group gathering that took place at Cap. 599F premises to establish that, at the time of the alleged offence, the person had taken all reasonable steps to comply with all requirements or restrictions as specified in the applicable Cap. 599F direction.

6. L.N. 223 came into operation on 20 November 2020.

7. According to paragraph 25 of the LegCo Brief (no file reference) issued by the Food and Health Bureau in November 2020, the Administration is of the view that given the exigency of the situation, public consultation is not feasible.

8. As advised by the Clerk to the Panel on Health Services, the Panel has not been consulted on L.N. 222 and L.N. 223.

9. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 222 and L.N. 223.

Other matters

Government notices made by the Secretary under Cap. 599F

Latest requirements and directions in relation to catering business

10. By G.N. (E.) 213 of 2020 published in the Gazette on 24 November 2020, the Secretary has specified and directed that for a period of seven days from 26 November 2020 to 2 December 2020, in respect of all catering businesses, except (i) those set out in Part 1 of Schedule 1 to Cap. 599F,⁴ or (ii) those designated by the Chief Secretary for Administration pursuant to section 7A(1) of Cap. 599F to be exempt from the requirements and directions under Cap. 599F, the selling or supplying of food or drink for consumption on the premises of the catering business must be ceased, and any such premises (or part thereof) where food or drink is sold or supplied for consumption on the premises must be closed, from 0:00 am to 4:59 am every day. Dine-in services can operate until 11:59 pm every night.

⁴ The relevant premises are (1) hospitals; (2) residential care homes; (3) treatment centres; (4) boarding schools; (5) premises controlled or managed by the Government; and (6) premises constructed to be used, and used, as private dwellings.

11. Under G.N. (E.) 213 of 2020, the specification and directions made by G.N. (E.) 208 of 2020 (published in the Gazette on 20 November 2020) in respect of the five-day period from 22 November 2020 to 26 November 2020 continue to be effective (including protective measures such as wearing masks, body temperature screening and provision of hand sanitisers, and restrictions such as suspension of live performance and dancing, and no more than four persons being seated together at one table) with modifications that a person responsible for carrying on a catering business must apply for a location-specific LeaveHomeSafe venue QR code ("QR code") for the catering premises by registering on or before 2 December 2020 on the Government website and must display the QR code obtained at the entrance of the premises or at a conspicuous position within two working days upon receipt of the QR code; and the number of persons participating in any one banquet at any one time may not exceed 40 persons. Upon the commencement of G.N. (E.) 213 of 2020 on 26 November 2020, G.N. (E.) 208 of 2020 will be suspended.

Latest directions in relation to scheduled premises

12. By G.N. (E.) 214 of 2020 published in the Gazette on 24 November 2020, the Secretary has directed that three types of premises i.e. bathhouse, premises (commonly known as party room) that are maintained or intended to be maintained for hire for holding social gatherings, and establishment (commonly known as club or nightclub) that is open late into the night, usually for drinking, and dancing or other entertainment, must be closed for a period of seven days from 26 November 2020 to 2 December 2020. Twelve types of scheduled premises⁵ including hotel and guesthouse (as opposed to 13 types of scheduled premises under G.N. (E.) 209 of 2020 published in the Gazette on 20 November 2020) in Part 1 of Schedule 2 to Cap. 599F may open for a period of seven days from 26 November 2020 to 2 December 2020, subject to the requirements and restrictions detailed at Annex to G.N. (E.) 214 of 2020.

13. Under G.N. (E.) 214 of 2020, the directions made by G.N. (E.) 209 of 2020 (published in the Gazette on 20 November 2020) in respect of the five-day period from 22 November 2020 to 26 November 2020 continue to be effective (including the requirements that a person must wear a mask at all times within a meeting room or a function room of the club-house and the number of persons must not at any one time exceed 75% of the normal capacity of that room) with certain modifications including:

⁵ The other 11 scheduled premises are: (1) amusement game centre; (2) fitness centre; (3) place of amusement; (4) place of public entertainment; (5) beauty parlour; (6) club-house; (7) karaoke establishment; (8) mahjong-tin kau premises; (9) massage establishment; (10) sports premises; and (11) swimming pool.

- (a) the manager of the 12 types of scheduled premises must apply for the QR code on or before 2 December 2020 and must display it at the entrance of the premises or at a conspicuous position within two working days upon receipt of the QR code; and
- (b) for hotel and guesthouse, no more than four persons or eight persons may respectively be allowed to stay in guest room/ rental unit therein or in a suite at any one time, and if there is a person undergoing compulsory quarantine in the hotel, the persons under quarantine must be arranged to be segregated from other persons not under quarantine including putting them on separate floors as far as practicable.

14. Upon the commencement of G.N. (E.) 214 of 2020 on 26 November 2020, G.N. (E.) 209 of 2020 will be suspended.

Government notices made by the Secretary under Cap. 599G

15. By G.N. (E.) 215 of 2020 published in the Gazette on 24 November 2020, the Secretary has, for the purposes of section 3(1) of Cap. 599G, specified a period of seven days from 26 November 2020 to 2 December 2020, during which no group gatherings of more than four persons may take place in any public place or at any Cap. 599F premises in relation to which any requirement or restriction as specified in the applicable Cap. 599F direction is not complied with. Upon the commencement of G.N. (E.) 215 of 2020 on 26 November 2020, the previous Government notice for the application of the group gathering prohibition (i.e. G.N. (E.) 206 of 2020 published in the Gazette on 18 November 2020) for the seven-day period from 20 November 2020 to 26 November 2020 will be suspended.

Government notices made by the Secretary under the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H)

16. By G.N. (E.) 207 of 2020 published in the Gazette on 19 November 2020, the Secretary has added Ecuador and Germany as specified places⁶ to which Cap. 599H is applicable and a set of conditions (e.g. to produce documentary proof on a negative nucleic acid test result for COVID-19 and confirmation of at least 14 days' room reservation in a hotel in Hong Kong) applicable in respect of a person who, on the day of boarding a civil aviation aircraft that arrives or is about to arrive at Hong Kong, or during the 14 days before that day, has stayed in any of the specified places. Upon the

⁶ Other specified places are Bangladesh, Belgium, Ethiopia, France, India, Indonesia, Kazakhstan, Nepal, Pakistan, the Philippines, Russia, South Africa, Turkey, United Kingdom, United States of America, and all other countries except China.

commencement of G.N. (E.) 207 of 2020 on 28 November 2020, the previous Government notice for the regulation of cross-boundary conveyances and travellers with effect from 22 November 2020 (i.e. G.N. (E.) 193 of 2020 published in the Gazette on 11 November 2020) will be suspended.

Government notices made by the Secretary under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C)

17. By G.N. (E.) 210 of 2020 published in the Gazette on 21 November 2020, the Secretary has specified, with effect from 23 November 2020, for the purposes of Cap. 599C:

- (a) all places in China outside Hong Kong, Guangdong and Macao as Category 1 specified places in China;
- (b) Guangdong and Macao as Category 2 specified places in China; and
- (c) category of persons (i.e. Hong Kong residents or temporary residents with limit of stay expired on or after 1 January 2020 who intends to resume residence in Hong Kong) and conditions set out in the Annex to G.N. (E.) 210 of 2020 for Guangdong and Macao (e.g. to produce documentary proof on a negative polymerase chain reaction based nucleic acid test result for COVID-19 and the person has been allocated a quota for entering Hong Kong).

The effect of the specifications under (b) and (c) above is that Hong Kong residents or temporary residents returning from Guangdong or Macao who meet the conditions set out in the Annex are exempt from the 14-day compulsory quarantine requirement under section 3(1) of Cap. 599C.

18. Upon the commencement of G.N. (E.) 210 of 2020 on 23 November 2020, the previous Government notice for the application of the compulsory quarantine requirement on certain persons arriving at Hong Kong with effect from 23 November 2020 (i.e. G.N. (E.) 191 of 2020 published in the Gazette on 11 November 2020) has been suspended.

Government notices made by the Secretary under the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599J)

19. By G.N. (E.) 211 of 2020 published in the Gazette on 21 November 2020, the Secretary has, pursuant to section 10(1) of Cap. 599J, specified that any person who had been present at any of the 14 specified premises⁷ during

⁷ The 14 specified premises are (1) Chassé; (2) Dance Concept; (3) Dance Culture; (4) Dance Star Academy; (5) DanzStage Dance Studio; (6) Green Apple International Dance School; (7) Heavenly Dance; (8) Hsin Kuang Banquet Hall; (9) 金麗會; (10) Matex Club; (11) More Dance Fame; (12) Palladium International Dance Club; (13) Shining Star Dance Studio; and (14) Starlight Dance Club.

the period from 1 to 21 November 2020 to be the category of persons who must undergo a polymerase chain reaction-based nucleic acid test for COVID-19 ("specified test") on or before 24 November 2020. The Secretary has also specified the 30-day period from 25 November 2020 to 24 December 2020 as the period during which a compulsory testing order may be issued under Cap. 599J for non-compliance with G.N. (E.) 211 of 2020.

20. By G.N. (E.) 212 of 2020 published in the Gazette on 23 November 2020, the Secretary has further specified that: (a) any person who had been present at any of the seven specified premises⁸ during the period from 1 to 23 November 2020 to be the category of persons who must undergo the specified test on or before 26 November 2020; and (b) the 30-day period from 27 November 2020 to 26 December 2020 as the period during which a compulsory testing order may be issued under Cap. 599J for non-compliance with G.N. (E.) 212 of 2020.

Government notices made by the Secretary under the Prevention and Control of Disease (Wearing of Mask) Regulation (Cap. 599I)

21. By G.N. (E.) 216 of 2020 published in the Gazette on 24 November 2020, the Secretary has, pursuant to section 3(1) of Cap. 599I, specified the seven-day period from 26 November 2020 to 2 December 2020 during which a person must wear a mask at all times while boarding or on board a public transport carrier, or entering or present in an MTR paid area or a specified public place, save for any outdoor public places in any country parks and special areas as defined in section 2 of the Country Parks Ordinance (Cap. 208). Upon the commencement of G.N. (E.) 216 of 2020 on 26 November 2020, the previous Government notice on the period for the application of the requirement to wear masks (i.e. G.N. (E.) 202 of 2020 published in the Gazette on 14 November 2020) will be suspended.

Prepared by

CHUI Ho-yin, Alvin
Assistant Legal Adviser
Legislative Council Secretariat
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⁸ The seven specified premises are (1) Betterment Banquet Hall; (2) Hsin Kuang Banquet Hall; (3) Hit Power Entertainment Company; (4) The World Dancer Performing Arts Federation; (5) Starway Music Studio; (6) Victor Yang Studio; and (7) 星輝宴會廳.